OLD HUNDRED GOLD MINING CO.

IBLA 82-494 Decided March 30, 1982

Appeal from decision of Colorado State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. C MC 112446, C MC 112448 through C MC 112458.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Authority: Generally--Constitutional Law: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Department of the Interior, as an agency of the executive branch of the Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

4. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Frank J. Anesi, Esq., Durango, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Old Hundred Gold Mining Co. appeals the Colorado State Office, Bureau of Land Management (BLM), decision of January 22, 1982, which declared the unpatented Roanoke, Quartz, Old Hundred Placer, Wedge, Kimball, Roeder, Connecting Link, Milda Queen, Gap, Elkhorn, Monroe Junction, and Old Gold mining claims, C MC 112446, C MC 112448 through C MC 112458, abandoned and void because no evidence of assessment work or notice of intention to hold the claims was filed with BLM during calendar year 1980 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states the required assessment work was performed and proof thereof recorded in San Juan County, Colorado. Appellant's president was seriously ill and the other officers of the company were not aware of the requirement that the proof of labor be filed timely and annually with BLM. Appellant contends that failure to allow relief in the circumstances of this case is a very harsh application of the law and constitutes a taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution. Appellant advises that the claims have been relocated and appropriate certificates of location filed with BLM for recordation.

[1] Section 314 of FLPMA, supra, requires that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the owner of the claim from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314, FLPMA, are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] Arguments similar to those here presented were considered by the Board in Lynn Keith, supra. There we held

> [t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 192, 88 I.D. at 371-72.

[3] As to the constitutionality of FLPMA, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an Act of Congress is constitutional. William O. Bahny, 56 IBLA 190 (1981); Lynn Keith, supra; Alex Pinkham, 52 IBLA 149 (1981), and cases cited therein. Jurisdiction of such an issue is reserved exclusively to the judicial branch. However, to the extent that the recordation section of FLPMA has been considered by the courts, it has been upheld. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981).

[4] Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. Appeal to this Board satisfies due process requirements. Fahey Group Mines, Inc., supra; George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978). The request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge